

Honorable Judge Benjamin Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY JAMES
M. PETERS, DETECTIVE SHARON KRAUSE,
SERGEANT MICHAEL DAVIDSON, CLARK
COUNTY PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE COUNTY
OF CLARK and JOHN DOES ONE THROUGH
TEN,

Defendants.

No. C11-5424BHS

**DECLARATION OF
KATHLEEN T. ZELLNER IN
SUPPORT OF PLAINTIFF'S
RESPONSE TO DEFENDANTS'
RENEWED/SECOND MOTIONS
FOR SUMMARY JUDGMENT**

**NOTE ON MOTION
CALENDAR:**

Friday, February 22, 2013

Pursuant to 28 U.S.C. § 1746, Kathleen T. Zellner declares under penalty of perjury under the laws of the State of Washington and the United States of America that the following is true and accurate:

1. I am the attorney of record for Plaintiff Clyde Ray Spencer in the above entitled action. I am competent to testify in all respects, and make this declaration from personal knowledge.

DECLARATION OF KATHLEEN T. ZELLNER IN SUPPORT
OF PLAINTIFF'S RESPONSE TO DEFENDANTS' RENEWED/
SECOND MOTIONS FOR SUMMARY JUDGMENT
(C11-5424BHS) — 1

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1 2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the
2 deposition of Shirley Spencer. Specifically, the following pages from the transcript of the
3 deposition are attached: 6, 14-16, 27-29, 31, 54, 56, 62, 84, 100-06, 109, 116-18, 148 and 150-
4 54. Also attached at the end of Exhibit A is a true and correct copy of Exhibit B to that
5 deposition, which Shirley Spencer authenticated on pp. 150-52 of her deposition.

6 3. Attached hereto as **Exhibit B** is a true and correct copy of Detective Krause's Utility
7 Report from various dates consisting of 12 pages, Bates Nos. Spencer-00529-00540. Exhibit B
8 was produced by Defendant James Peters in response to Plaintiff's requests to produce.
9

10 4. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the
11 deposition of Clyde Ray Spencer. Specifically, the following pages from the transcript of the
12 deposition are attached: 8-9, 39, 48, 54, 55-58, 65, 101, 108-09, 122, 125, 153-54, 179-81.

13 5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the
14 evidence deposition of Shirley Spencer, taken August 30, 1996, in the matter of *Clyde*
15 *Raymond Spencer v. Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas
16 proceedings). Specifically, the following pages from the transcript of the deposition are
17 attached: 10 and 18.
18

19 6. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the
20 deposition of Sharon Krause, taken May 22, 1996, in the matter of *Clyde Raymond Spencer v.*
21 *Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the
22 following pages from the transcript of the deposition are attached: 14-16, 27-28, 31, and 38-39.
23 Also attached at the end of Exhibit E is a true and correct copy of Exhibit No. 1 to that
24 deposition, which Krause authenticated on p. 15 of her deposition.
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1 7. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from the
2 deposition of James Michael Davidson. Specifically, the following pages from the transcript of
3 the deposition are attached: 12, 24, 31, 45-46, 51-53, 62-64, 69-70, 72-73, 81, 85, 97-99, 107-
4 112, 129, and 132.

5 8. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from the
6 deposition of Sharon Krause. Specifically, the following pages from the transcript of the
7 deposition are attached: 6, 9, 11, 14-17, 27, 34, 48-49, 51, 64-67, 93- 94, 159, and 202. Also
8 attached at the end of Exhibit G is a true and correct copy of Exhibit No. 1 to that deposition,
9 which Krause authenticated on pp. 9 and 14 of her deposition. Also attached at the end of
10 Exhibit G is a true and correct copy of Exhibit No. 2 to that deposition, which Krause
11 authenticated on p. 14 of her deposition.
12

13 9. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from the
14 deposition of Rebecca Roe. Specifically, the following pages from the transcript of the
15 deposition are attached: 9, 13-15, 62, 73-75, 77, 79-80, 115, 170, 217, and 222. Also attached
16 at the end of Exhibit H is a true and correct copy of Exhibit No. 1 to that deposition, which Roe
17 authenticated on p. 13 of her deposition.
18

19 10. Attached hereto as **Exhibit I** is a true and correct copy of excerpts from the
20 deposition of Matthew Spencer. Specifically, the following pages from the transcript of the
21 deposition are attached: 41-42, 47-52, 61- 68, 71, 91-92, and 162-88. Also attached at the end
22 of Exhibit I are true and correct copies of Exhibit Nos. 1 and 2 to that deposition.
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24 11. Attached hereto as **Exhibit J** is a true and correct copy of excerpts from the
25 deposition of Kathryn (Spencer) Tetz. Specifically, the following pages from the transcript of
26 the deposition are attached: 19, 28-29, 33-34, 37-43, 45, 72-73, 85-87, 93-94, 97, and 99.
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1 12. Attached hereto as **Group Exhibit K** is a true and correct copy of Detective
2 Flood's "Assist Outside Agency" report dated August 29, 1984, Bates Nos. Spencer-00398-
3 00407. Group Exhibit K was produced by Defendant James Peters in response to Plaintiff's
4 requests to produce.

5 13. Attached hereto as **Exhibit L** is a true and correct copy of the transcript of the
6 interview of Kathryn Spencer conducted by James Peters on December 11, 1984.

7 14. Attached hereto as **Exhibit M** is a true and correct copy of the Court of Appeals of
8 the State of Washington order transferring Clyde Ray Spencer's personal restraint petition for a
9 reference hearing in Case No. 37229-I-II.
10

11 15. Attached hereto as **Exhibit N** are true and correct copies of newspaper articles
12 reporting the arrest of Plaintiff Ray Spencer.

13 16. Attached hereto as **Exhibit O** is a true and correct copy of excerpts from the
14 hearing testimony of Manuel Galaviz, M.D., in the matter of *Clyde Raymond Spencer v. Joseph*
15 *Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following
16 pages from the transcript of the hearing are attached: 270-77.
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18 17. Attached hereto as **Exhibit P** is a true and correct copy of Dr. Galaviz's progress
19 notes from a visit with Matthew Hansen on March 6, 1985, which he identified and
20 authenticated on page 270 of **Exhibit O**.

21 18. Attached hereto as **Exhibit Q** is a true and correct copy of excerpts from the
22 deposition of James Peters. Specifically, the following pages from the transcript of the
23 deposition are attached: 73, 112, 120, 134, 136, 145-46 154, 158, 163-64, 193, 246-47, 247-49,
24 257, and 263.
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1 19. Attached hereto as **Exhibit R** is a true and correct copy of excerpts from the
2 deposition of Dr. William Bernet. Specifically, the following pages from the transcript of the
3 deposition are attached: 53-54, 127, 149, 156, and 172.

4 20. Attached hereto as **Exhibit S** is a true and correct copy of Dr. Abrams letter dated
5 October 11, 1984, Bates No. Spencer-00443. Exhibit S was produced by Defendant James
6 Peters in response to Plaintiff's requests to produce.

7 21. Attached hereto as **Exhibit T** is a true and correct copy of excerpts from the
8 deposition of Dr. David Raskin. Specifically, the following pages from the transcript of the
9 deposition are attached: 24, 26-31, 52-53, and 135.

10 22. Attached hereto as **Exhibit U** is a true and correct copy of excerpts from the
11 deposition of Dr. Ann Link. Specifically, the following pages from the transcript of the
12 deposition are attached: 10-13, 14-15, and 86-88. Also attached at the end of Exhibit U is a
13 true and correct copy of Exhibit No. 1 to that deposition, which Dr. Link authenticated on p. 15
14 of her deposition.

15 23. Attached hereto as **Exhibit V** is a true and correct copy of the expert report of
16 Rebecca Roe, produced by Defendant James Peters on November 7, 2012. Specifically, the
17 following pages from the report are attached: 8-9.

18 24. Attached hereto as **Exhibit W** is a true and correct copy of excerpts from the
19 deposition of Arthur Curtis. Specifically, the following pages from the transcript of the
20 deposition are attached: 20-25, 29, 37, 40, 45-50, 55-56, 61, 68-69, and 82-83

21 25. Attached hereto as **Exhibit X** is a true and correct copy of Defendant Krause's
22 report on December 20, 1984, Bates No. Spencer-00543. Exhibit X was produced by
23 Defendant James Peters in response to Plaintiff's requests to produce.

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1 26. Attached hereto as **Exhibit Y** is a true and correct copy of Defendant Krause's
2 report from February 27 and February 28, 1985, Bates Nos. Spencer-00565-00586. Exhibit Y
3 was produced by Defendant James Peters in response to Plaintiff's requests to produce.

4 27. Attached hereto as **Exhibit Z** is a true and correct copy of Defendant Krause's
5 report from October 16, 1984 (first interview of Kathryn Spencer), Bates Nos. Spencer-00445-
6 00458 Exhibit Z was produced by Defendant James Peters in response to Plaintiff's requests to
7 produce.

8 28. Attached hereto as **Exhibit AA** is a true and correct copy of Defendant Krause's
9 report from October 18, 1984 (second interview of Kathryn Spencer), Bates Nos. Spencer-
10 00461-00472 Exhibit AA was produced by Defendant James Peters in response to Plaintiff's
11 requests to produce.

12 29. Attached hereto as **Exhibit BB** is a true and correct copy of Defendant Krause's
13 report from March 25, 1985 (third interview of Kathryn Spencer), Bates Nos. Spencer-00623-
14 00628 Exhibit BB was produced by Defendant James Peters in response to Plaintiff's requests
15 to produce.

16 30. Attached hereto as **Exhibit CC** is a true and correct copy of notes, dated August 25,
17 2010, reflecting a series of interviews between Matthew Hansen and the Clark County
18 prosecutor's office, Bates Nos. Spencer-07296-07297. Exhibit CC was produced by Defendant
19 James Peters in response to Plaintiff's requests to produce.

20 31. Attached hereto as **Exhibit DD** is a true and correct copy of the Washington
21 Supreme Court's order denying discretionary review in *In re the Personal Restraint of Clyde R.*
22 *Spencer*, Case No. 84137-3.

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32 Attached hereto as **Exhibit EE** is a true and correct copy of Defendant Krause's report from October 18, 1984 (interview of DeAnne Spencer), Bates Nos. Spencer-00501-00522. Exhibit EE was produced by Defendant James Peters in response to Plaintiff's requests to produce.

33. Attached hereto as **Exhibit FF** is a true and correct copy of excerpts from the deposition of DeAnne Spencer. Specifically, the following pages from the transcript of the deposition are attached: 33-35, 42-43, 93, and 152.

34. Attached hereto as **Exhibit GG** is a true and correct copy of Defendant Krause's report from March 7, 1984 (second interview of Matthew Hansen), Bates Nos. Spencer-00617-00620. Exhibit GG was produced by Defendant James Peters in response to Plaintiff's requests to produce.

35. Attached hereto as **Exhibit HH** is a true and correct copy of Defendant Krause's report from March 21, 1984 (third interview of Matthew Hansen), Bates Nos. Spencer-00607-00615. Exhibit HH was produced by Defendant James Peters in response to Plaintiff's requests to produce.

36. Attached hereto as **Exhibit II** is a true and correct copy of excerpts from the hearing testimony of Kathryn Magee, M.D., in the matter of *Clyde Raymond Spencer v. Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following pages from the transcript of the hearing are attached: 282 and 290-93.

37. Attached hereto as **Exhibit JJ** is a true and correct copy of excerpts from Lucy Berliner et al., *Investigation and Prosecution of Child Abuse*, (1987), produced by Defendant James Peters in response to Plaintiff's request to produce. Specifically, the following pages from the book are attached: V-21 (Bates No. 9910).

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1 38. Attached hereto as **Exhibit KK** is a true and correct copy of excerpts from the
2 deposition of James Peters, taken July 30, 1996, in the matter of *Clyde Raymond Spencer v.*
3 *Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the
4 following pages from the transcript of the deposition are attached: 13 and 29. Also attached at
5 the end of Exhibit KK is a true and correct copy of Exhibit No. 3 to that deposition, which
6 Peters authenticated at p. 29 of his deposition.

7 39. Attached hereto as **Exhibit LL** is a true and correct copy of the “Omnibus
8 Application by Defendant and Order of Court” in the case of *State v. Spencer*, Case No. 85-1-
9 00007-2, dated January 25, 1985, Bates Nos. Spencer-00025-00028. Exhibit LL was produced
10 by Defendant James Peters in response to Plaintiff’s requests to produce.

11 40. Attached hereto as **Exhibit MM** is a true and correct copy of the letter written by
12 James Peters to Dennis M. Hunter, Chief Deputy Prosecuting Attorney for Clark County, dated
13 April 22, 2009, and the enclosed letter drafted by James Peters to the Columbian regarding the
14 investigation of Ray Spencer, Bates Nos. Spencer-08797-008805. Exhibit MM was produced
15 by Defendant James Peters in response to Plaintiff’s requests to produce.

16 41. Attached hereto as **Exhibit NN** is a true and correct copy of the Declaration of Ray
17 Spencer dated May 2, 1986.

18 42. Attached hereto as **Exhibit OO** is a true and correct copy of the affidavit of James
19 Peters, dated February 28, 1985, Bates Nos. Spencer-00599-00602. Exhibit MM was produced
20 by Defendant James Peters in response to Plaintiff’s requests to produce.

21 43. Attached hereto as **Exhibit PP** is a true and correct copy of excerpts from the
22 hearing testimony of James Peters, in the matter of *Clyde Raymond Spencer v. Joseph Klauser*,
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1 *et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following pages
2 from the transcript of the hearing are attached: 330 and 397.

3 44. Attached hereto as **Exhibit QQ** is a true and correct copy of excerpts from the oral
4 ruling of the Honorable Robert J. Bryan in the matter of *Clyde Raymond Spencer v. Joseph*
5 *Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following
6 pages from the transcript of the hearing are attached: 522-23.

7 45. Attached hereto as **Exhibit RR** is a true and correct copy of excerpts from the
8 deposition of James Michael Davidson, taken July 25, 1996, in the matter of *Clyde Raymond*
9 *Spencer v. Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings).
10 Specifically, the following pages from the transcript of the hearing are attached: 14, 23-26, 37.

11 46. Attached hereto as **Exhibit SS** is a true and correct copy of excerpts from the
12 hearing testimony of James Michael Davidson in the matter of *Clyde Raymond Spencer v.*
13 *Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the
14 following pages from the transcript of the hearing are attached: 78.

15 47. Attached hereto as **Exhibit TT** is a true and correct copy of excerpts from the
16 hearing testimony of Ray Spencer, in the matter of *Clyde Raymond Spencer v. Joseph Klauser,*
17 *et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following pages
18 from the transcript of the hearing are attached: 162-65.

19 48. Attached hereto as **Exhibit UU** is a true and correct copy of the declaration of
20 Lynda Harper dated February 4, 1994.

21 49. Attached hereto as **Exhibit VV** is a true and correct copy of the declaration of Ray
22 Spencer dated December 12, 2012, and Exhibit C attached thereto.

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50. Attached hereto as **Exhibit WW** is a true and correct copy of excerpts from the discovery deposition of Shirley Spencer, taken June 4, 1996, in the matter of *Clyde Raymond Spencer v. Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following pages from the transcript of the deposition are attached: 5.

51. Attached hereto as **Exhibit XX** is the "Release Agreement" in the case of *State v. Spencer*, dated January 3, 1985, Bates No. Spencer-00660. Exhibit XX was produced by Defendant James Peters in response to Plaintiff's requests to produce.

52. Attached hereto as **Exhibit YY** is a true and correct copy of Defendant Krause's report from October 2, 1984 (interview of Karen Stone), Bates Nos. Spencer-00427-00433. Exhibit YY was produced by Defendant James Peters in response to Plaintiff's requests to produce.

SIGNED this 14th day of February, 2013 in Downers Grove, Illinois.

Respectfully submitted,

/s/ Kathleen T. Zellner

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Admitted *pro hac vice*

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Attorney for Plaintiffs

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DECLARATION OF SERVICE

I hereby certify that on February 14, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record as follows:

| | |
|---|---|
| Patricia Campbell Fetterly Daniel J. Judge Robert M. McKenna Assistant Attorney General Torts Division PO Box 40126 Olympia, WA 98504-0116 Email: patriciaf1@atg.wa.gov Attorneys for Defendant James M. Peters | |
| Guy Bogdanoich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com Attorney for Defendant Sharon Krause | Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com Attorneys for Defendant Michael Davidson |

/s/ Kathleen T. Zellner

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